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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,109	08/21/2006	Pascal Fourcade	F-876 (31223.00106)	7205
25264 7590 08/26/2009 FINA TECHNOLOGY INC PO BOX 674412 HOUSTON, TX 77267-4412				
EXAMINER				
LENIHAN, JEFFREY S				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
08/26/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/564,109

**Applicant(s)**

FOURCADE, PASCAL

**Examiner**

Jeffrey Lenihan

**Art Unit**

1796

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-15, 17-21 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-15, 17-21 and 23-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This Office Action is responsive to the amendment filed on 05/06/2009.
2. The objections and rejections not addressed below are deemed withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

***Claim Rejections - 35 USC § 103***

4. Claims 8-15, 17-21 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nabeta et al, US4302554, in view of Marechal, EP1312624.

The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference.

5. Claims 8-11, 13, 14, 17, 18, and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkie et al, US6022612, in view of the K RESIN ® DK11 product data sheet, published by Chevron Phillips Chemical Company in January 2001 (of record).

The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference.

6. Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wilkie et al, US6022612 and the K RESIN ® DK11 product data sheet as applied to claim 8 above, and further in view of Marechal, EP1312624.

The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference.

***Response to Arguments***

7. Applicant's arguments filed 05/06/2009 have been fully considered but they are not persuasive.
8. Regarding the rejection of claims over the combination of Nabeta et al, US4302554, and Marechal, EP1312624, applicant argues that the references do not teach the formation of a homogeneous blend and that the claimed invention provides unexpected results. Applicant cites the data presented in the specification for film F1 as evidence of said unexpected results.
9. Regarding the formation of a homogeneous blend, "[T]he PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his [or her] claimed product. Whether the rejection is based on inherency under 35 U.S.C. 102, on *prima facie* obviousness under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same..." as that required with respect to product-by-process claims. *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980) (MPEP § 2112). The combination of Nabeta and Marechal renders obvious the preparation of a composition comprising a metallocene-catalyzed ethylene polymer (mPE) and a styrene-butadiene block copolymer (SB). As discussed in the previous Office Action, said SB contains similar amounts of both styrene and butadiene compared to the claimed styrene-butadiene component. Furthermore, Marechal

discloses the preparation of mPE with properties of density and melt index ( $MI_2$ ) (see Marechal, Table I) that are within the ranges recited by applicant for the claimed metallocene-catalyzed polyethylene component (specification page 4, lines 1-10); by extension, the mPE of Marechal would have a similar comonomer content and molecular weight as the claimed metallocene-catalyzed polyethylene component. As the composition rendered obvious by the prior art is prepared by combining similar amounts of polymer components having similar properties as the components of the claimed invention, the examiner takes the position that one of ordinary skill would reasonably expect the miscibility of the components of the prior art would be the same as that of the component of the claimed invention. Applicant is therefore required to provide factual evidence demonstrating that the limitation of a homogenous blend is not met by the composition rendered obvious by the prior art.

10. Regarding the allegedly unexpected results, the examiner notes that applicant's specification states that film F1 was made from a blend, B1, (specification page 10, line 12) which is disclosed to comprise 50% by weight of a metallocene-catalyzed polyethylene and 50% by weight of a commercially available styrene-butadiene block copolymer (see specification page 8, lines 20-28; and Page 11, Table II). Independent claim 8, however, requires that "either the metallocene catalyzed ethylene polymer or the styrene-butadiene block copolymer are present in the composition in an amount of greater than 50 wt%." This limitation is also required by independent claim 26. As neither polymer component is present in an amount greater than 50% by weight, film F1 does not fall within the scope of the claimed invention. The examiner therefore takes

the position that data obtained from film F1 is not relevant to the patentability of the claims as they are currently written.

11. Regarding the rejection of claims over Wilkie in combination with additional references, applicant argues that the references do not teach a homogeneous blend, and that the proposed modification of Wilkie in view of K RESIN® DK11 would destroy the intended function of providing a matte finish.

12. Regarding the limitation of a homogeneous blend, the examiner takes the position that this argument is not persuasive per the same rationale outlined in paragraph 9 of this Office Action.

13. Regarding the intended function, the examiner disagrees with applicant's interpretation that Wilkie's sole intended function is to provide a matte finish. Wilkie states that the invention of US6022612 is packaging formulations "which offer a matte finish surface and can additionally or alternatively offer excellent cold seal receptivity" (Column 3, lines 9-12). The examiner takes the position that Wilkie's use of the phrase "or alternatively" demonstrates that the films produced according to US6022612 are not required to have a matte finish so long as they provide excellent cold seal receptivity. The examiner further notes that Wilkie specifically recites 1) a cold seal receptive layer (Column 4, lines 26-28) and 2) a matte finish cold seal receptive layer (Column 4, lines 31-32) as separate uses of the invention of US6022612. Applicant has not provided any arguments that the proposed modification would destroy Wilkie's intended use as a cold seal receptive layer.

14. The examiner also notes that Wilkie states that a) the composition of US6022612 may contain as little as 5% by weight of the SB (Column 5, lines 1-3) and b) surface treatments may be used to prepare the matte finish (Column 4, lines 24-30; Column 5, lines 60 to 62; Column 6, lines 15-16). As applicant has not demonstrated that the proposed modification of Wilkie would result in a film that could not be surface treated in the manner discussed by Wilkie, the examiner takes the position that there is insufficient evidence to conclude that modifying the composition of US6022612 as proposed in the previous Office Action would result in a composition that could not be used to prepare a matte finish, when surface-treated in the manner disclosed by Wilkie. The rejection is therefore maintained.

### ***Conclusion***

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Lenihan whose telephone number is (571)270-5452. The examiner can normally be reached on Monday through Thursday from 7:30-5:00 PM, and on alternate Fridays from 7:30-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/  
Primary Examiner, Art Unit 1796

Jeffrey Lenihan  
Examiner, Art Unit 1796

/JL/